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DEFINITION OF LEGISLATIVE AND EXECUTIVE FUNCTIONS OF SCHOOL GOVERNMENT

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The fortunes of school administration in New York City and Chicago during the past three years are so generally familiar that it is hardly necessary to dwell upon them at this time. By the terms of their respective state laws as amended in 1917, both school systems, it will be recalled, were to be under the independent control of a board of education and the management of their technical affairs in charge of a statutory executive office.

Subsequent events in both cities may be summarized as follows: In New York the board has been fighting with the mayor over its constitutional rights and powers and with the superintendent of schools over his vested powers and responsibilities. In Chicago, likewise, there has been, on the one hand, almost constant litigation arising out of the manner in which the mayor has exercised his duty in the appointment of school trustees. On the other hand, there has been a particularly disastrous controversy between the board and the superintendent over the exercise of the statutory functions of the latter office.

SCHOOL LAWS LARGELY AT FAULT

The explanation of the experiences through which our two largest school systems have been passing in recent years is to be found beyond reasonable doubt in the fact that their school laws are vague at crucial points where they should have been made explicit. Take, for example, that section of the Illinois school law which provides that an old board "shall continue in their office until their successors are appointed." The New York state law, on the other hand, is more explicit and provides that old boards "shall continue in their office and possess the powers and duties of boards of education under this act until their successors are appointed." In Chicago it required sixteen months of costly litigation to convince the city hall among other things that the Illinois

law meant in this particular precisely what the New York state law took pains to say in so many words.

A second example is to be found in the assumption of the mayor of Chicago that he created the school board. As a matter of fact, the board had been created by an earlier act of the legislature. The amendments of 1917 reduced its membership, increased its powers, lengthened its term of office, and broadened its duties, but had nothing to do with creating it, much less with delegating any such duty to the appointing powers. A few words in the law itself setting forth these facts probably would have obviated the necessity of six months more of litigation which were in fact required to enlighten the city hall as to the precise intention of this section of the statute.

A third example may be cited which concerns the executive and involves the experiences of both cities. Their school laws provide that the board shall have "general control" of the school system, and that the executive shall perform his duties "subject to the approval of the board." Neither law, however, takes pains to explain how this control is to be exercised or how this approval is to be expressed. What have been the results in the two cities? The Chicago board, first, decided that it was jointly responsible with the superintendent for the performance of all the functions of his office, and later that it was wholly responsible. Those who are familiar with the facts will recall how finally the superintendency was stripped of all its functions and how these were transferred to other employees of the board. The New York board for its part interpreted its relation to the superintendent in much the same fashion and recently undertook to transfer a number of his prerogatives to the president of the board. In Chicago the actions of the board in this particular have not been acted upon by the courts. In New York the superintendent called the attention of the State Commissioner of Education to the actions of the board. In his judicial capacity the commissioner has recently handed down a decision instructing the school board of New York City to restore the duties of the executive to the superintendent.

PRACTICAL SCHOOL LAWS

These examples suggest that it is one thing for a school law to be constructive and quite another thing for it to be both constructive and practical. A practical school law, it may be granted, is one

that can get itself properly administered in at least all its mechanical details without it being necessary to call repeatedly upon the courts to determine its meaning. Both the Chicago and New York City laws are admittedly constructive. They provide the framework of a modern administrative organization. That they intended the appointing powers, the school board, and the executive to have and to maintain the right relation to each other in the work of the schools is evident upon reading them. But they were so drafted that it was comparatively easy to subject their fundamental administrative provisions to convenient and mischievous interpretations.

It seems, therefore, a safe generalization to make at this point that all school laws should be drafted with the hazards of politics and board membership clearly in mind. As it is, they are too often written as if these hazards were negligible. The right of all generations of school children to the best educational opportunity available in their time is generally admitted. And yet this right is repeatedly endangered by school laws which are drafted as if only politically disinterested and capable officials were available to administer them. The lessons of experience, however, are not to be denied. Of these, none is more clearly established than that professional politicians in and out of the school system are the great menace to be guarded against. Moreover, impractical school laws are expensive luxuries. Chicago taxpayers, for example, have had to pay thousands of dollars to defend what proved to be wrong interpretations of their school law.

MODIFICATION OF STANDARD SCHOOL LAWS

There would seem then to be good arguments in favor of modifying our standard school laws, especially those which provide for the appointment of school trustees by municipal officials. The problem is to bring out in the law itself the exact relation of the appointing powers, the school board, and the executive to each other in the operation of the schools. The objective, that is to say, is a school statute in which these fundamental requirements are so definitely set forth as to defy plausible misinterpretation. The task undertaken here is an attempt to point out the directions modifications of the law should take in approaching a solution of this problem.

MODES OF PROCEDURE

It has been stated in substance that the intent of the two laws above referred to was sound. Their weakness lay unquestionably in their failure to define the modes of procedure through which the appointing powers, the school board, and the executive were to exercise their respective functions in words that would have made the intent of the law stand out unmistakably clear.

APPOINTMENT OF SCHOOL TRUSTEES

A statement in the law, for example, that a school board is a corporate body cannot compete in public interest, as experience has often proved, with the fact that it is the mayor who selects or appoints the school trustees. On the personnel of the board many interests may depend. Politics, school sites, leases, jobs, promotions, transfers, and salaries are all in the balance. To those whose interests are thus involved the mayor is the key to the situation. It is inevitable in the circumstances that he should assume in the mind of a large part of the public an unwarranted position as the ultimate authority in local school affairs. Concrete evidence that this actually comes to pass is to be inferred from the last sentence of the following court decision:

Although the (school) commissioners were appointed by the mayor, they were vested with full power to manage and control the educational interests of the entire municipality and to appoint all subordinates, officers, and employees who were subject to their government and control exclusively and were their servants and subordinates. The (school) commissioners in the discharge of their functions were not amenable to the (city) corporation in any respect. [*Ham v. Mayor*, 70 N. Y. 459]

A long line of court decisions of the several states might be added to show that school laws quite generally intend that school boards shall be independent of the appointing powers when once constituted, and to prove that they seldom succeed in avoiding the necessity of court action to establish that independence in actual practice. Court decisions affirm in clear language that school boards are offices of a state school system and not agents of the municipality; that in appointing school trustees the mayor acts as an agent of the state school system and not as a municipal official; and that when once constituted, school boards are entirely independent of the appointing powers and of the municipal government.

It would seem worth while to follow as closely as possible the language of court decisions in drafting school laws in everything that relates to the creation of school boards, the appointment of trustees, and the independence of the school system, the school board, and school trustees.

THE BOARD IS A LEGISLATIVE BODY

A second serious difficulty frequently arises in the management of school affairs out of the manner in which our school laws are drafted with respect to the relation of a school board to the school system. In New York City and Chicago the laws plainly intended that the school board should function as a legislative body. It is quite clear from what has happened in both cities, however, that the wording of the laws permitted a different interpretation of their meaning. In rendering his decision on the controversy between the board and the superintendent in New York, the state commissioner declared quite definitely that under the state law the school board is a legislative and not an executive body. He further stated in his ruling:

The resolution complained of, in so far as it attempts to deprive the superintendent of schools of these (his legal) functions, is unauthorized by statute and is, therefore, void The provisions of the (board) by-laws noted would grant powers to the board which, under reasonable interpretation of the statute, it does not possess, and which, under sound administrative practice, it should not exercise even if it did possess.

This decision suggests that it would be of decided advantage if school laws generally would state clearly that school boards are legislative and not executive bodies and so avoid the necessity of court action to establish the fact.

A LEGISLATIVE SESSION

Merely to state in the law that a board is a legislative body, however, would be to invite controversies similar to those which are constantly recurring between the board and the appointing powers. In that connection, experience and many court actions indicate that well-defined modes of procedure are required to establish the corporate character of the board in fact as well as in law. It is in the highest degree probable that similarly defined modes of procedure would be required to establish the legislative character of the board in actual practice.

When we turn to consider our national and state governments we find that the legislature meets for a stated period, legislates, and then adjourns. In a number of states, Illinois among others, two years, and in Alabama four years, elapse between legislative sessions. Meanwhile in both governments the administration of the laws devolves uninterrupted upon the executive.

In our city governments, likewise, the same system is quite commonly observed. The city council meets for a stated period, legislates, and then adjourns. The administration of the laws, including the ordinances of the city council, is vested in the mayor and his staff.

When it comes to the management of our city school systems a radically different method of procedure obtains in practice. The clear-cut distinction between the legislative and the executive which is jealously guarded in our federal, state, and many municipal governments is either lacking or ignored in the operation of our school systems. Here the common practice is that school boards usurp almost at will any or all of the functions of the executive.

The Department of Superintendence has said:

The impression which a careful study of this material makes on one's mind is the painful one that most administrative situations are undefined and shifting. Schools are administered in most cases without clear definition or responsibility. It ought to be possible to organize and define the technical duties of the school system and to distinguish them from the broad duties which reside in the representatives of the people.¹

To do this the lessons of experience and many decisions of our highest courts suggest that the next logical step to take towards a clear definition of the respective functions of the board and superintendent is to adopt the practice of our federal, state, and municipal governments in the management of public education. As an experiment in this direction it is suggested that our school laws might with advantage undertake:

To establish an annual legislative session of the board of not more than twelve consecutive weeks; to begin, for example, with the third week of September of each year and to end automatically with the twelfth week of the session. To make carefully guarded provisions for extra sessions to be called (*a*) by the superintendent

¹ Report of the Committee on Relation Between Boards of Education and Superintendent, Kansas City meeting, 1917, Department of Superintendence.

in emergencies affecting the welfare of the schools and (b) by the president or any three members of the board in emergencies affecting the executive.

To require the meetings of the annual and extra sessions to be open to the public and the business of the board to be transacted in public meetings.

To require, after the annual session has convened and organized for work, that all business shall come before the board under three heads to be transacted in the following order: namely, the Annual School Budget, the Annual Executive Report, and New Business. To provide that new business shall be introduced into the calendar by the executive under the third heading to be considered by the board at the proper time—except that in an emergency the board, by the unanimous consent of its members, may suspend the regular order of business to consider at once and determine the specific issue raised, returning promptly thereafter to the regular order.

To require the board to provide opportunities for public hearings on the budget, executive report, and new business, the hearings to be conducted under the rules of the board. And to provide that all applications shall be transmitted to the board through the executive office.

To delegate to the board the broadest legislative powers practicable under the state constitution for the maintenance and development of an efficient school system. To require the board to exercise a general control over all school affairs through the rules and ordinances adopted during the annual legislative session, provided that no rule or ordinance may be adopted at any time that transfers, abrogates, or diminishes in any way the statutory rights and powers of the executive.

To enjoin board members permanently from influencing or attempting to influence the executive in any way to appoint, transfer, suspend, promote, demote, or dismiss any person employed in the school system.

To enjoin permanently all persons holding public office in the municipal, state, or federal governments from influencing or attempting to influence the board of education in any way or the members thereof individually or collectively in any matter pertaining to the conduct, maintenance, operation, or development of the school system.

If the preceding modifications were clearly and explicitly written into the law in terms which would compel their observance, the force of current objections to the larger boards, to the appointment of standing committees of the board, and to the compensation of board members would largely disappear.

THE EXECUTIVE

It is the general practice to organize city school systems under a single executive commonly called the superintendent of schools. In some instances under the provisions of the law this office closely approaches the best standards of organization. In a great many more cases, however, the office lacks definite statutory powers and responsibilities. Even where this is true the superintendent is sometimes permitted by the board to wield great influence in the conduct of the school system. More often, indeed, he is found to be little more than a clerk meeting his duties from day to day with such meager authority as a capricious board permits him to exercise.

Recently in New York, as we have seen, judicial action was necessary to compel the board to restore to the superintendent of schools certain of his duties which it had undertaken to transfer to other persons. In Chicago, the executive is divided into three departments. The law intended the three executive officers to have large powers and the initiative in their respective offices. But in trying to work out a mode of procedure to be observed by the board and the executive in the conduct of school affairs the law unfortunately obscured the relation which it attempted to establish between the two. This unhappily made it possible for the board to treat the executive as if no change in their former relations were contemplated by the new law.

There is little doubt on the part of all communities that technical training is necessary for the proper conduct of schools, but the exact definition of the sphere within which technical training is needed is not yet worked out in most systems. . . . , the board should not do this work itself. It is a public board, created to see that a certain piece of public work is done, not a group of technical officers created to do the work.¹

The best practice suggests that all city school systems should be organized under a single executive, the superintendent. Under the general scheme of organization contemplated here, he should

¹ Report of the Committee on Relation Between Boards of Education and Superintendent, Kansas City meeting, 1917, Department of Superintendence.

be appointed by the board for a term of four years, subject, however, upon the unanimous vote of the whole membership of the board, to dismissal at any time during the annual session or at an extra session called by the president or any three members of the board—otherwise by trial with right of counsel, written charges having been preferred with sixty days' notice. And, to add the necessary emphasis to the technical character of the executive, experience indicates that the law should impose the following specific duties upon the superintendent:

To draft rules establishing standards of education, experience and training to be observed in selecting and appointing all teachers, principals, district, assistant, and associate superintendents, and all heads of departments, divisions, and bureaus in the school system. These rules to be subject to approval by a majority vote of the board and, upon adoption, to be an ordinance of the board, provided, however, that the standards as submitted by the superintendent must be consistent with the general provisions of the law and may not be changed in any particular by the board except upon the unanimous vote of its membership.

To draft rules to determine and maintain efficiency throughout the school system, these rules to be subject to the approval of the board and upon adoption by a majority vote to be an ordinance of the board, provided that these rules may not be changed as submitted by the superintendent except upon the unanimous vote of the membership of the board.

To appoint and transfer all teachers subject to the rules on standards and efficiency; to appoint, transfer, promote, demote, or dismiss at his discretion, but in accordance with a mode of procedure to be adopted by the board, all principals, district, assistant, and associate superintendents, and all heads of departments, divisions, and bureaus engaged directly in educational work; and to appoint, transfer, promote, demote, or dismiss all other employes of the school system subject to the civil service rules of the board.

To draft the budget and to make it public at least two weeks before the opening of the annual legislative session, and, if necessary, to explain and defend the budget in detail before the board, provided that the board shall have authority to instruct the superintendent to make such changes in the budget as it deems wise, but not of its own initiative to make such changes nor to instruct the

superintendent to do so except upon a three-fourths vote of the membership of the board.

To prepare the annual executive report and to make it public at least two weeks before the opening of the annual legislative session, and to present the said report in the form of a clear statement of the work of the year in terms of costs and children, and to include therein such other matter as may be required by the ordinances of the board together with such comments, recommendations, and statements as the superintendent may deem necessary.

And to provide that board members and all persons holding public office in the municipal, state, and federal governments shall refrain from interfering or attempting to interfere in any way with the executive or any member of his staff in the performance of his duties.

SPECIAL PROVISIONS

It is becoming clearer day by day that one of the most valuable services board members could render would be to mold and lead public opinion in the interests of the new era of educational problems upon which the nation has entered. It may be possible for the law to recognize the need of this important service. If so, it might undertake, for example, to require board members annually, during the six months from January to June, to speak at the request of responsible organizations other than political at meetings free to the public. To provide that the subjects to be considered at these meetings shall be of general interest as for example school taxes, necessary school legislation, new school policies, expansion or discarding of current school activities, building programs, and so on. To provide further that the discussion of subjects of partisan or sectarian import shall be prohibited at these meetings. And to provide that board members shall respond to invitations to speak at such meetings until they have each responded to, and filled, a number of engagements equivalent to one engagement per week for the period of six months.

If this provision were to be incorporated in the law it would perhaps be altogether proper and desirable in the public interests to compensate school trustees at the rate, for example, of \$5,000 per year. A proper compensation would operate perhaps in checking a too great increase in board membership, assuming, of course,

that under this general scheme the larger boards would be the more valuable as legislative bodies.

CONCLUSION

If the modifications suggested throughout the foregoing paragraphs are valid and practical, they might reasonably be expected, if properly written into our school laws, to contribute towards a clearer definition of the relation of the appointing powers, the school board, and the executive to each other and the work of the schools. They would also, it may be admitted, contribute not a little towards making our school laws reliable text and reference books on modern school administration and as such a decided help to new board members. And finally, they might be reasonably expected to help in the direction of school laws which could depend with some degree of certainty upon public opinion rather than court opinion to enforce the observance of their fundamental provisions, at least so far as these have to do with a scheme of organization and with modes of administrative procedure in the conduct of school affairs.